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No. 87-1661

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1987

ASARCO Incorporated, Can-Am Corporation,
Magma Copper Company, and
James P.L. Sullivan,

Petitioners,

vs.

Frank and Lorain Kadish, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF ARIZONA

RESPONDENTS' FIRST
SUPPLEMENTAL BRIEF

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TABLE OF AUTHORITIES

Cases:

<u>Deer Valley Unified School</u> <u>District v. Superior Court,</u> <u>P.2d</u> <u>No. CV-86-0577-T (Ariz. S. Ct.</u> <u>June 30, 1988)</u>	1, 3
<u>Herb v. Pitcairn,</u> <u>324 U.S. 117 (1945)</u>	4
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Respondents are filing this supplemental brief to draw the Court's attention to the very recent Arizona Supreme Court decision in Deer Valley Unified School District v. Superior Court, _____ P.2d _____, No. CV-86-0577-T (Ariz. S. Ct. June 30, 1988). There, the court made absolutely clear that the Arizona Constitution establishes a totally independent basis for imposing trust restrictions on the disposition of state school lands.

The case involved an effort by a local school district to condemn trust lands for use as a school building site. The Arizona Supreme Court held that such condemnation was not permissible because it would circumvent provisions in the state constitution requiring that all sales of school trust lands be conducted

via public auction and competitive bidding. In reaching this result, the Arizona Supreme Court conceded that this Court had construed identical requirements for competitive bidding in the Arizona Enabling Act to be inapplicable to land acquisitions by state agencies. Lassen v. Arizona, 385 U.S. 458, 464-65 (1967). The Arizona Supreme Court held, however, that it was free to construe the state constitution as providing even greater protection for trust lands than the Enabling Act.

The language used by the court in Deer Valley makes abundantly clear that Arizona courts construe the state constitution as providing a completely independent set of school trust restrictions that are even more protective than those in the Enabling Act:

The framers of our constitution . . . went beyond mere acceptance of the terms and benefits of a federal statute. They independently replicated the essential restrictions of the Enabling Act in Article X of the Arizona Constitution.

.
Thus, at all times since Arizona joined the Union, there have been two complementary levels of protection against improvident state legislative or executive disposal of Arizona's school trust land.

.
The Enabling Act, as interpreted in Lassen, merely sets out the minimum protection for our state trust land. We independently conclude that our state constitution does much more.

Deer Valley, slip op. at 6, 7, 12.

In the instant case, the Arizona Supreme Court struck down the state's mineral royalty statute under both the Arizona Constitution and the Enabling Act. See Petition at 2a, 24a, 27a, 29a. In light of the Deer Valley decision, it is apparent that the Arizona Supreme Court would continue to view the royalty

statute as unconstitutional even if this Court were to uphold the statute under the Enabling Act. Under these circumstances, there is plainly an independent and adequate state law ground for the decision below, and this Court accordingly lacks jurisdiction to grant review. Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945). The Petition for Certiorari should be denied.

Respectfully submitted,

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